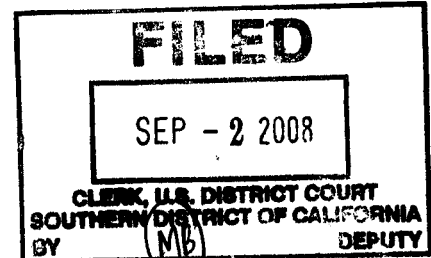


1 KAREN P. HEWITT  
United States Attorney  
2 CARLA J. BRESSLER  
Assistant United States Attorney  
3 California State Bar No. 134886  
United States Attorney's Office  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101  
Telephone: (619) 557-6763  
6  
7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ2538  
11 Plaintiff, )  
12 v. )  
13 MARCELINO ARMANDO )  
14 GUTIERREZ-ANDRADE, )  
15 Defendant. )  
16

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carla J.  
19 Bressler, Assistant United States Attorney, and defendant MARCELINO ARMANDO  
20 GUTIERREZ-ANDRADE, by and through and with the advice and consent of defense counsel,  
21 Joseph McMullen, that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

28 CJB:jam:8/21/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **September 17, 2008**.

6           4. The material witnesses, Juana Calvarin-Ramirez, Jorge Soto-Carballo, and Jesus  
7 Herrera-Arceo, in this case:

8               a. Are aliens with no lawful right to enter or remain in the United States;

9               b. Entered or attempted to enter the United States illegally on or about  
10 August 17, 2008;

11              c. Were found with defendant instructing the material witnesses how to elude  
12 inspection at the pedestrian primary lane at the San Ysidro, California Port of Entry (POE) and that  
13 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right  
14 to enter or remain in the United States;

15              d. Were paying \$1,800-\$2,800 to others to be brought into the United States  
16 illegally and/or transported illegally to their destination therein; and,

17              e. May be released and remanded immediately to the Department of Homeland  
18 Security for return to their country of origin.

19           5. After the material witnesses are ordered released by the Court pursuant to this  
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

23               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
24 substantive evidence;

25               b. The United States may elicit hearsay testimony from arresting agents  
26 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
27 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Marcelino Armando Gutierrez-Andrade 2

08MJ2538

1 of (an) unavailable witness(es); and,

2 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
3 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
4 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
5 waives the right to confront and cross-examine the material witness(es) in this case.

6 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
7 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
8 further that defendant has discussed the terms of this stipulation and joint motion with defense  
9 counsel and fully understands its meaning and effect.

10 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
11 immediate release and remand of the above-named material witness(es) to the Department of  
12 Homeland Security for return to their country of origin.

13 It is STIPULATED AND AGREED this date.

14 Respectfully submitted,

15 KAREN P. HEWITT  
United States Attorney

16  
17 Dated: 9/2/2008

Carla J. Bressler  
CARLA J. BRESSLER  
Assistant United States Attorney

18  
19 Dated: 9/2/08

Joseph McMullen  
JOSEPH McMULLEN  
Defense Counsel for Gutierrez-Andrade

20  
21  
22 Dated: 9/2/08

Marcelino Gutierrez  
MARCELINO ARMANDO GUTIERREZ-ANDRADE  
Defendant

23  
24  
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28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Marcelino Armando Gutierrez-Andrade 3

08MJ2538

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 9/2/08

  
United States Magistrate Judge